

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Crl.Rev.Pet.No. 1997 of 2005()

C.CNO.811/02 OF JFCM-I, KOTTARAKKARA

REVN. PETITIONER: DEFACTO COMPLAINANT:

**NARAYANAN NAIR,
S/O. LATE NARAYANAN NAIR, AGED 73 YEARS,
KALPALAYAM, KARIMPINPUZHA, PAVITRESWARAM VILLAGE,
KOTTARAKKARA TALUK.**

BY ADV. SRI.R.SATISH KUMAR

RESPONDENTS: STATE & ACCUSED NOS.1 TO 10:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. PREMKUMAR, AGED 33 YEARS,
S/O. GOPALAN NAIR, KOOTTUVILAKUZHAYIL VEEDU,
KARIMPINPUZHA MURI, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA.**
- 3. SANALKUMAR, AGED 33 YEARS,
S/O. RAMAKRISHNA PILLAI, CHARUVILA PUTHEN VEEDU,
KARIMPINPUZHA MURI, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA.**
- 4. SANTHANKUTTY NAIR, AGED 26 YEARS,
S/O. NEELAKANDAN NAIR, SANTHI BHAVAN,
KARIMPINPUZHA MURI, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA.**

**5. SREEKUMARAN THAMPI, AGED 32 YEARS,
S/O. BHASKARAN PILLAI, BHASKARA BHAVAN,
KARIMPINPUZHA MURI, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA.**

**6. SUNILKUMAR, AGED 24 YEARS,
S/O. THULASEEDHARAN PILLAI, SUNIL BHAVAN,
KARIMPINPUZHA MURI, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA.**

**7. VINU, AGED 25 YEARS,
S/O. RAMACHANDRAN PILLAI, THEKKETHIRUVATTIYIL,
KARIMPINPUZHA MURI, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA.**

*** 8. DILEEP, AGED 25 YEARS,
S/O. VIJAYAN PILLAI, NARAYANA VILASOM,
KARIMPINPUZHA MURI, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA.
(DELETED THE 8TH RESPONDENT FROM THE PARTY ARRAY AS
PER THE ORDER DATED 6.3.07 IN CRL.M.A.NO.1922/07)**

**9. GOPINATHAN PILLAI, AGED 69 YEARS,
S/O. KRISHNA PILLAI, PULILMOOTIL VEEDU,
KARIMPINPUZHA MURI, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA.**

**10. SASIDHARAN PILLAI, AGED 44 YEARS,
S/O. SIVARAMA PILLAI, KALEEKAL VEEDU,
KARIMPINPUZHA MURI, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA.**

**11. SREEKANDAN NAIR, AGED 35 YEARS,
S/O. CHELLAPPAN PILLAI, AMIRTA BHAVAN VEEDU,
KARIMPINPUZHA MURI, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA.**

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

V. RAMKUMAR, J.

Crl. R.P. No. 1997 OF 2005 D

Dated this the 16th day of July, 2007

O R D E R

Heard both sides.

2. The revision petitioner is the de facto complainant in C.C. No.811/2002 on the file of the JFCM-I, Kottarakkara. Ten accused persons were charge sheeted by the Sub Inspector of Police, Kottarakkara, in Crime No.283/2002 for offences punishable under sections 143, 147, 148, 452, 427 and 506(ii) read with section 149 IPC.

3. The case of the prosecution can be summarized as follows:-

On 21.3.2002 at about 10 p.m. the accused persons formed themselves into an unlawful assembly carrying deadly weapons such as sword, etc. and criminally trespassed into the house of PW1 and committed mischief by damaging the door and windows and destroyed household items kept inside the house and broke 40 tiles, electric bulbs, etc. causing a loss of Rs.3,000/-(Rupees three thousand only) to PW1 and also criminally intimidated PW1 when he attempted to resist their act.

4. Accused Nos.1 to 6 and 8 to 10 stood trial before

JFCM-I, Kottarakkara for the aforementioned offences. As per the memorandum of evidence CWs1 to 3 are the occurrence witnesses. Out of this, CW1 was examined as PW1 and he is the revision petitioner. He supported the prosecution. CW3 was examined as PW2 and he turned hostile to the prosecution.

5. The court below, after trial, as per judgment dated 27.6.2005 acquitted the accused persons and split up the case against absconding A7 and re-filed the same as C.C.No.731/05. The only evidence before the court was that of PW1 whose testimony was not accepted by the court below having regard to the disloyalty shown by PW2(CW3) the other eye witness examined by the prosecution.

6. The learned counsel for the revision petitioner would have it that the CW2 who was an important eye witness could not be examined before court since he had undergone a surgery on 11.4.2005 and that is the reason why he could not made available for examination. The counsel would also submit that CW2 had met with an accident which led to the surgery on 11.4.2005. It is not known as to when CW2 allegedly met with the accident. There is nothing on record to show that on 21.11.2004 when the

evidence for the prosecution started, CW2 was prevented from being examined as a witness by virtue of any accident or other disabling factor. Admittedly, his surgery was only on 11.4.2005. The learned Magistrate has stated that in order to prove the charge PW1 alone gave evidence for the prosecution and that the other witnesses were not available in spite of repeatedly taking coercive steps. Such being the position, the revision petitioner cannot have the luxury of a further trial by giving him an opportunity to examine CW2 who has not been shown to be disabled either on 21.11.2005 or any time immediately thereafter. Admittedly, there are civil and criminal cases between the parties and a connected criminal case between the same parties had ended in acquittal. The Magistrate has observed that the prosecution was not able to prove the identity of the accused with regard to the occurrence which took place at 10 p.m. Under these circumstances, I see no reason to interfere with the impugned order. It is accordingly confirmed. Resultantly, this revision is dismissed.

(V. RAMKUMAR, JUDGE)

aks